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Election of judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 955 (1994) of 8 November 1994, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, and to that end to adopt the Statute of the International Tribunal for Rwanda annexed thereto.

2. Elections for the judges of the two Trial Chambers of the International Tribunal for Rwanda were held in 1995. The terms of office of the six judges elected in those elections expired on 24 May 1999.

3. Prior to the expiry of the terms of office of the judges so elected, the Security Council, by its resolution 1165 (1998) of 30 April 1998, decided to establish a third Trial Chamber of the International Tribunal for Rwanda and, to that end, to amend articles 10, 11 and 12 of the Statute of the Tribunal and replace those articles with the provisions set out in the annex to the resolution. It further decided that the elections for the three judges of the third Trial Chamber should be held together with the elections for the six judges of the two existing Trial Chambers.

4. Elections for the nine judges of all three Trial Chambers of the International Tribunal for Rwanda were held in 1998. The terms of office of the nine judges elected in those elections are due to expire on 24 May 2003.



5. By its resolution 1329 (2000) of 30 November 2000, the Security Council decided to increase the number of judges in the Appeals Chambers of the International Tribunal for Rwanda and of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the "International Tribunal for the Former Yugoslavia"). To that end, it decided, *inter alia*, to amend articles 11, 12 and 13 of the Statute of the International Tribunal for Rwanda and to replace those articles with the provisions set out in annex II, to that resolution. In order that the increase in the number of judges in the Appeals Chambers of the International Tribunals might be made, the Security Council also decided that two additional judges should be elected as soon as possible as judges of the International Tribunal for Rwanda and that the judges so elected should serve until the expiry of the terms of office of the judges currently serving on the Tribunal.

6. Elections for the two additional judges took place in 2001. In accordance with Security Council resolution 1329 (2000) of 30 November 2000, the terms of office of the two additional judges who were so elected are also due to expire on 24 May 2003.

7. Pursuant to what is now article 12 bis, subparagraph 1 (a), of the Statute of the International Tribunal for Rwanda, following the amendments that were introduced by Security Council resolution 1431 (2002) of 14 August 2002, the Legal Counsel, on behalf of the Secretary-General, invited by circular letter of 25 July 2002, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for permanent judges of the International Tribunal. In accordance with article 12 bis, subparagraph 1 (b), of the Statute, as so amended, each State was invited to nominate within 60 days of the date of the invitation, up to two candidates, no two of whom were to be of the same nationality. The Legal Counsel also noted that, in accordance with paragraph 1 (b) of article 12 bis of the Statute, candidates might not be of the same nationality as any judge who was a member of the Appeals Chamber of the International Tribunal for Rwanda and who was elected or appointed as a permanent judge of the International Tribunal for the Former Yugoslavia in accordance with article 13 bis of the Statute of that Tribunal.

8. The 17 nominations which had been received by the Secretary-General within the period stipulated in subparagraph 1 (b) of article 12 bis of the Statute of the International Tribunal for Rwanda, as amended by Security Council resolution 1431 (2002) of 14 August 2002, were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 1 (c) of article 12 bis, as so amended, by means of a letter dated 26 September 2002 (S/2002/1106). In that letter, the Secretary-General noted that the number of candidates whose nominations had been received was short of the minimum number of candidates who, in accordance with subparagraph 1 (c) of article 12 bis of the Statute, as amended, were to make up the list which the Security Council was to establish for transmission to the General Assembly. In the light of this information, the Security Council, at its 4621st meeting, on 11 October 2002, decided to extend the deadline for nominations until 15 November 2002. The President of the Council informed the Secretary-General of that decision by means of a letter dated 11 October 2002 (S/2002/1131).

9. The 22 nominations which had been received within the period stipulated in subparagraph 1 (b) of article 12 bis of the Statute of the International Tribunal for Rwanda, as extended by the Security Council in the decision taken at its 4621st meeting, on 11 October 2002, were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 1 (c) of article 12 bis, by means of a letter dated 20 November 2002 (S/2002/1272). By means of a letter dated 21 November 2002, the Legal Counsel also forwarded to the President of the Security Council, in case the Council should wish to consider it receivable, an additional nomination which had been received by the Secretary-General following the expiry of the period stipulated in paragraph 1 (b) of article 12 bis of the Tribunal's Statute, as extended. At its 4666th meeting, on 13 December 2002, the Security Council, in accordance with paragraph 1 (c) of article 12 bis of the Statute of the International Tribunal for Rwanda, established a list of 23 candidates for transmittal to the General Assembly. The list was adopted by the Council in its resolution 1449 (2002) of 13 December 2002 and was formally conveyed to the President of the General Assembly by means of a letter dated 13 December 2002 from the President of the Security Council (A/57/491).

10. The list of candidates for permanent judges and the procedure for the election of the permanent judges of the International Tribunal for Rwanda are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/57/493).

II. List of candidates for permanent judges of the International Tribunal for Rwanda

11. The list of candidates for permanent judges of the International Tribunal for Rwanda is as follows:

- Mr. Mansoor Ahmad (Pakistan)
- Mr. Teimuraz Bakradze (Georgia)
- Mr. Kocou Arsène Capochichi (Benin)
- Mr. Frederick Mwela Chomba (Zambia)
- Mr. Pavel Dolenc (Slovenia)
- Mr. Serguei Aleckseievich Egorov (Russian Federation)
- Mr. Robert Fremr (Czech Republic)
- Mr. Asoka de Zoysa Gunawardana (Sri Lanka)
- Mr. Mehmet Güney (Turkey)
- Mr. Michel Mahoué (Cameroon)
- Mr. Winston Churchill Matanzima Maqutu (Lesotho)
- Mr. Erik Møse (Norway)
- Ms. Arlette Ramaroson (Madagascar)
- Mr. Jai Ram Reddy (Fiji)

Mr. William Hussein Sekule (United Republic of Tanzania)
 Mr. Emile Francis Short (Ghana)
 Mr. Francis M. Ssekandi (Uganda)
 Mr. Cheick Traoré (Mali)
 Mr. Xenofon Ulianoschi (Republic of Moldova)
 Ms. Andrésia Vaz (Senegal)
 Ms. Inés Mónica Weinberg de Roca (Argentina)
 Mr. Mohammed Ibrahim Werfalli (Libyan Arab Jamahiriya)
 Mr. Lloyd George Williams (Saint Kitts and Nevis)

III. Procedure for the election of permanent judges

12. The election of permanent judges will be held in accordance with the following provisions:

(a) Article 12 and article 12 bis of the Statute of the International Tribunal for Rwanda, as amended by the Security Council in its resolution 1431 (2002) of 14 August 2002;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the International Tribunal for Rwanda, it was decided at the time of the previous elections of judges in 1995, 1998 and 2001 to follow similar election procedures in the General Assembly. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of permanent judges of the International Tribunal.

13. In accordance with article 12 bis, paragraph 1 (d), of the Statute of the International Tribunal for Rwanda, as amended by the Security Council in its resolution 1431 (2002) of 14 August 2002, the Holy See, being a non-member State, which maintains a permanent observer mission at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

14. On the date of the election, the General Assembly will elect 11 permanent judges from the list of candidates submitted to it by the Security Council.

15. According to article 12 of the Statute of the International Tribunal for Rwanda, as amended, permanent judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to the same provision, due account shall be taken in the overall composition of the Chambers of the International Tribunal of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

16. In accordance with paragraph 1 (d) of article 12 bis of the Statute of the International Tribunal for Rwanda, as amended, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the

non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

17. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 191 Member States, together with the non-member State mentioned in paragraph 13 above. Accordingly, 97 votes constitute an absolute majority in the Assembly for the purpose of the present election.

18. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than 11 candidates.

19. If, in the first ballot, the number of candidates obtaining an absolute majority is less than 11, a second ballot will be held, and balloting will continue in the same meeting, if and as necessary, until 11 candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than 11 candidates less the number of candidates who have already obtained absolute majorities.

20. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

21. If, in the first ballot, more than 11 candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until 11 candidates, and no more, obtain an absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for 11 candidates.

22. When 11 candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.